4. Privileged wills under the English law remain operative unless expressly revoked, although the maker of the will remains in England several years, after the date of the will. But the Indian Succession Act expressly provides that a nuncupative will shall be void at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will. Many more instances of such divergence may be quoted, but I hope what I have already pointed out would be sufficient to show how difficult it would be for our Courts to decide as to the applicability of the law in case of the wills of Europeans should the question arise. I need hardly add that a large extent of landed property in the country is owned by Europeans and my friend Mr. Prince will bear me out when I say that several wills are being written in reference to those properties; and it is nothing but likely that questions might arise in our courts in reference to them. Thus I think, Sir, it has to be seriously considered whether we would be justified in excluding from the scope of the Bill, the wills of Europeans and others. In reference to the other points which require further consideration you will have already observed from my paper of amendments and the memo attached thereto, what they are and I shall not detain you just now by dwelling upon them at length. Now the only question to be considered is whether these points can be conveniently considered in the Council or it could be relegated to a Committee. It seems to me a Committee may more conveniently deal with these questions and bring their decision formally before the Council. I think there are not wanting precedents for such a course and my asking you to agree to the course is due to the fact that there is rather a large number of points that require your consideration.

Mr. Nagam Aiya seconded.

Mr. Krishnaswamy Rao.—Considering the long list of amendments suggested I think it would be an advantage to consider them in Select Committee.

President.—Some of the amendments seem to affect the integrity of the Bill as it now stands and I think it desirable to have them considered once for all by the whole Council. Instead of a separate Committee the Council may go into Committee and consider the amendments and suggestions.

Resolved accordingly that the consideration of the Wills Bill be adjourned to the following Tuesday and Wednesday.

LEGISLATIVE COUNCIL REGULATION AMENDMENT BILL.

Mr. Krishnaswamy Rao moved that the Bill as amended by the Select Committee be taken into consideration.

The motion was put and agreed to.

Section 7.

Mr. Sankara Menon.–The first amendment is in regard to section 7. The proper place of para 4 of the section is, it will be seen, immediately after the second para with which it is directly connected. The proper sequence is secured without disturbing the present order by making the para an Explanation. I would accordingly propose that para 4 be made into an Explanation.

Seconded by Mr. Krishnaswamy Rao.

Carried.

Mr. Sankara Menon.—I beg to move my next amendment, viz.—Add this after section 7 as a new section.—"If any member shall be unable to attend three consecutive ordinary meetings of the Council, it shall be lawful for Our Government to declare by notification in the Government Gazette that the seat in Council of such member has become vacant." The Indian Councils Act on which the Bill is based contains the provision and its importance is so obvious that I should consider its omission a mere oversight in drafting. 'Three consecutive ordinary meetings' means a space of 9 months and all the time we have not the benefit of the member's views and opinions.

Seconded by Mr. Thanu Pillai.

Carried.

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Mr. Sankara Menon.—I beg to move that in section 8 an Explanation be added, viz., "For the purpose of this section, Our Government may decide who the Senior Official member is."

The necessity for this provision too appears to me patent. I think we require some sort of definition as to who should be the senior official member. Is it to be decided with reference to pay, or merely by office. There must be something to guide us. Now perhaps there is no difficulty. But such contingencies are by no means unlikely.

Seconded by Mr. Prince.

Carried.

Mr. Sankara Menon.—I have one more amendment, viz., "In section 9, line 2, insert the words "and place" between the words "time" and "of". This is also in view of a possible contingency. I do not know if it is an absolute rule that the President should hold the meetings of the Council only at the Capital.

Seconded by Mr. Ramier.

Carried.

Mr. Krishnaswamy Rao.—I beg to move that the Legislative Council Regulation Amendment Bill as now amended be read on a future day of which notice shall be given.

The motion was put and agreed to.

EVIDENCE BILL.

Mr. Prince.—In pursuance of the permission accorded to me at the last meeting of the Council, I now beg to introduce a Bill to consolidate and define the Law of Evidence.

'Evidence' in the language of English and Indian lawyers is, as stated by Mr. Stokes, "that which is offered by litigants in order to convince the Judge that "the facts alleged by them are true, or so probable that he ought, under the circum- "stances, to act upon the supposition that those facts are true. Evidence sufficient "to produce the desired conviction is said to amount to proof."

The object of all legal enquiry is the ascertainment of truth, and this end can hardly be better attained than by having a set of rules, which will be useful in guiding the judicial officer to have before him all the facts which are material to be considered in arriving at a correct decision on a particular issue, limiting the area within which such facts are to be found, and prescribing the ways in which such facts must be proved. In the absence of such rules there would be nothing to restrict the discretion of Judges in deciding which facts are relevant, or to set limits to the scope of any judicial enquiry. The result of this would be wastage of public time and unnecessary expense and vexation to litigants, not to speak of the serious danger to the cause of public justice by the main question at issue being lost sight of in a heap of collateral matter. Hence all civilized states have thought fit to provide themselves with definite rules of evidence, calculated to guard against such consequences and forming part of the adjective law of the country.

Thus in British India, we have Act I of 1872 which contains clear rules (1) declaring that nothing may be proved save a fact in issue or a fact relevant to the issue, (2) setting forth what facts are relevant and how such facts should be proved, and what facts may be taken judicial notice of, besides (3) containing provisions regarding presumptions, onus of proof, estoppel, competency and examination of witnesses.

We have no codified law of evidence in this State. When any question arises as to the admission of evidence, competency of witnesses or mode of proof, our Courts very often refer to the Indian Evidence Act as a guide, but in some cases refuse to follow the rules therein enunciated. Practically, therefore, they are left to decide such questions according to the dictates of 'equity, justice, and good conscience.' But "these attractive words," as well observed by Sir James Stephen, "mean little more than an imperfect understanding of imperfect collections of not very recent editions of English text books." The practice of our Courts, therefore, leaves the law uncertain, and hence the necessity for legislation on the subject.

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